

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE
COMMISSION, :
Plaintiff, : 04 CV 4057

-against- : U.S. Courthouse
Central Islip, N.Y.

ISHOPNOMARKUP.COM, INC, SCOTT :
W. BROCKOP, ANTHONY M. KNIGHT, :
and MOUSSA YEROUSHALMI a/k/a :
MIKE YEROUSH :
Defendants. : TRANSCRIPT OF TRIAL

:
September 12, 2014
- - - - - X: 1:30 p.m.

BEFORE:

HONORABLE DENIS R. HURLEY, U.S.D.J.

APPEARANCES:

For the Plaintiff: UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
3 World Financial Center, Room 4300
New York, New York 10281
BY: ALEX VASILESCU, ESQ.
CHRISTOPHER J. DUNNIGAN, ESQ.

For the Defendant: ANTHONY KNIGHT, Pro Se

Court Reporters: HARRY RAPAPORT
OWEN M. WICKER
United States District Court
100 Federal Plaza
Central Islip, New York 11722
(631) 712-6105

<p style="text-align: right;">127</p> <p>1 AFTERNOON SESSION</p> <p>2</p> <p>3 THE COURT: Good afternoon, everybody.</p> <p>4 Please be seated.</p> <p>5 MR. VASILESCU: Good afternoon.</p> <p>6 MR. DUNNIGAN: Good afternoon, Judge.</p> <p>7 MR. KNIGHT: Good afternoon.</p> <p>8 THE COURT: The reason we're here this afternoon</p> <p>9 is for the Court to provide its bench decisions on various</p> <p>10 issues raised on Wednesday of this week and were not</p> <p>11 resolved on that date.</p> <p>12 The nature of the applications generally consist</p> <p>13 of a series of in limine motions which seek to limit the</p> <p>14 nature of the proof presented before the jury to the</p> <p>15 extent certain issues are not in dispute, and also to rule</p> <p>16 on items which are of significantly debatable</p> <p>17 admissibility.</p> <p>18 The first item that we'll address concerns the</p> <p>19 effect of this Court's decision rendered on September 24,</p> <p>20 2007. In that decision, the Court denied the plaintiff</p> <p>21 SEC's application for summary judgment directed at the</p> <p>22 second cause of action in the complaint, that being a</p> <p>23 cause of action charging a violation or violations of</p> <p>24 section 5 of the Securities Act of 1933.</p> <p>25 This problem has essentially two parts. The</p>	<p style="text-align: right;">129</p> <p>1 subset of the problem, said that there were material</p> <p>2 issues of fact as to the exemptions, and therefore since</p> <p>3 the exemptions basically, if established, would negate any</p> <p>4 possible violation of the statute, that would resolve the</p> <p>5 matter.</p> <p>6 Now the other way to do it, and the way I</p> <p>7 actually did do it, was to analyze section 5 and to go</p> <p>8 through its component parts, and then having done that,</p> <p>9 which is the first part of the analysis, to address the</p> <p>10 exemptions.</p> <p>11 My point is, the exemptions could have been</p> <p>12 addressed in the first instance, and that would have</p> <p>13 greatly shortened the decision.</p> <p>14 The secondary point I'd like to make in this</p> <p>15 regard is that when I went through the prima facie aspect</p> <p>16 of the subject cause of action, I was not endeavoring to</p> <p>17 issue partial judgment nor was I asked to issue partial</p> <p>18 judgment on these subsets of the cause of action.</p> <p>19 I'll step back and go through the several</p> <p>20 elements of the second cause of action.</p> <p>21 As to the second cause of action, the SEC must</p> <p>22 establish no registration statement that the securities</p> <p>23 were filed or was in effect of the commission;</p> <p>24 Two, a person directly or indirectly to sell or</p> <p>25 offer to sell securities; and</p>
<p style="text-align: right;">128</p> <p>1 first has to do with whether certain statements made in</p> <p>2 the Court's decision denying the motion for summary</p> <p>3 judgment basically resolved certain issues which are</p> <p>4 important in this case.</p> <p>5 For present purposes, I'll label that as the</p> <p>6 prima facie aspect of the present discussion concerning</p> <p>7 the effect of the September 2007 decision.</p> <p>8 The second portion or aspect of the matter</p> <p>9 presently under discussion concerns Rule 508(a).</p> <p>10 Against that backdrop, I'll review briefly the</p> <p>11 decision of September 24, 2007, because I believe that is</p> <p>12 necessary to place these two items in appropriate context.</p> <p>13 The SEC, as noted previously, sought summary</p> <p>14 judgment with respect to its second cause of action. That</p> <p>15 is the cause of action which is predicated on alleged</p> <p>16 violations of section 5 of the Securities Act of 1933.</p> <p>17 When the Court was presented with that motion,</p> <p>18 there were two ways that I might have approached the</p> <p>19 matters and perhaps others. But the two that were</p> <p>20 concerned are, one, to focus on the exemption portion of</p> <p>21 the relevant statute and say, in essence, there is a</p> <p>22 factual dispute here as to whether some of the exemptions</p> <p>23 under the relevant statute are applicable.</p> <p>24 Had I done that, I would have been consistent</p> <p>25 with the decision that was written on that particular</p>	<p style="text-align: right;">130</p> <p>1 Three, the sale was made through the use of</p> <p>2 interstate facilities or by the mail.</p> <p>3 So they are the elements.</p> <p>4 Against that backdrop, I indicated in the</p> <p>5 September 2007 decision that, one, there was -- it was</p> <p>6 undisputed in a sense there was no evidence presented</p> <p>7 before me for purposes of the motion to indicate that</p> <p>8 registration statements were filed.</p> <p>9 I also concluded, again on the information</p> <p>10 before me as part of my preliminary analysis, that there</p> <p>11 was no dispute that securities were offered for sale and</p> <p>12 in fact were sold.</p> <p>13 And similarly, one or more sales entailed the</p> <p>14 use of a facility of interstate commerce.</p> <p>15 So based on that, I said a prima facie case has</p> <p>16 been made out. I made that in the context of deciding</p> <p>17 whether there was a material issue of fact on the issues</p> <p>18 that were presented to me.</p> <p>19 I then turned to the exemptions, and the</p> <p>20 exemptions only come into play if the SEC makes out a</p> <p>21 prima facie case. Once that occurs, it is then the burden</p> <p>22 of the defendant to come forward in an effort to show that</p> <p>23 one or more of the exemptions that may be applicable is in</p> <p>24 fact applicable, and, thus, there is no violation of the</p> <p>25 charged section.</p>

<p style="text-align: right;">131</p> <p>1 Also in the decision which is important, and 2 I'll mention it now, the Court also found that the three 3 stock offerings that were made within a relatively 4 condensed period of time were integrated for purposes of, 5 I believe, it's Rule 504. And that similarly is 6 significant.</p> <p>7 Now, the SEC takes the position that those 8 matters have already been decided and, accordingly, 9 there's nothing for the jury to decide on these issues. 10 Why? Because the Court has, in effect, issued a 11 declaration, albeit not in a judgment resolving these 12 issues.</p> <p>13 I have wrestled with this problem. In fact, I 14 believe in 2009 during one of the numerous bench 15 conferences undertaken with respect to this case I told 16 Mr. Knight that it was my view, and in fact I think I 17 stated a little more categorically, that the question of 18 the prima facie violation of section 5 was no longer on 19 the table. I had determined that issue during the summary 20 judgment issue phase of the case.</p> <p>21 I have gone over that conclusion a number of 22 times since that date, and I think that conclusion 23 probably was incorrect. I say that for the following 24 reasons:</p> <p>25 Firstly, I do recognize that one of the purposes</p>	<p style="text-align: right;">133</p> <p>1 answer have framed this case.</p> <p>2 This case has had a long history. There have 3 been a number of discovery problems. There have been 4 reopening of discovery deadlines and so forth. However, 5 throughout this prolonged process there was never a motion 6 made under federal civil Rule 15 or otherwise to modify 7 the answer.</p> <p>8 Now, of late there has been some complaint about 9 the answer because Mr. Knight has contended that the 10 answer, though filed and allowed to stand for years before 11 the issue was even raised, was prepared without his input 12 by his ex-attorney or without his input on some of these 13 key issues.</p> <p>14 Now, I recognize under Rule 15 that liberality 15 should be exercised in determining whether a pleading 16 should stand. If in fact there was no prejudice to the 17 other side and the pleading was adjusted, typically the 18 Court would grant an amendment if one was sought, which is 19 not the case here, to the movant.</p> <p>20 The key factor in evaluating a motion to amend 21 the pleading, which again is not made, but let's assume 22 that it was made, would be prejudicial to the defendant. 23 The prejudice here would be overwhelming. The SEC was 24 allowed to rely on the issues as framed in the complaint 25 and the answer, and they did rely. They conducted their</p>
<p style="text-align: right;">132</p> <p>1 of summary judgment is to cull out, among other things, 2 independent of the circumstances, to cull out of the case 3 that which otherwise might be contested by not validly 4 contested. And therefore a party can ask for a summary 5 judgment on a particular point and/or a particular cause 6 of action, and if the movant is successful in that regard, 7 that particular element or cause of action is removed from 8 the case.</p> <p>9 Here, that's really not done. The SEC's target 10 was section 5, that being the second cause of action. I 11 was not asked to make these subsidiary findings during my 12 analysis in determining whether there was a material issue 13 of fact as to such items as to interstate commerce, 14 nonregistration and securities offered for sale.</p> <p>15 So in essence what I'm saying is that on the 16 prima facie case, insofar as the Court indicated in its 17 summary judgment motion that a prima facie case was 18 established for purposes of that motion, that 19 determination does not carry over to trial. That being 20 said, however, I think it is important to note certain 21 facts.</p> <p>22 In this case, there was an answer served to the 23 SEC's complaint. The SEC's complaint was filed, I 24 believe, in November or thereabouts in 2004, and an answer 25 was filed in January of 2005. The complaint and the</p>	<p style="text-align: right;">134</p> <p>1 discovery accordingly, and there was voluminous discovery.</p> <p>2 If I entertained a motion now, and this is 3 somewhat of a parenthetical given the procedural history 4 of the case, to modify the answer, this case would have to 5 go back to square one. That serves no one's interest.</p> <p>6 So again, the issues in this case are framed by 7 the complaint and the answer. In the answer, there are a 8 number of admissions.</p> <p>9 Again, I've gone through the whole answer and 10 I've compared it to the complaint, and I'll not go through 11 all of these. But by way of one example, there's no 12 question that no registration statement was filed. That 13 allegation is made in paragraph 92 of the complaint, and 14 the defendant admitted that such was the case in his 15 response, also bearing paragraph 92 of the answer.</p> <p>16 Also, with respect to the stock offerings, I 17 suggest to SEC counsel, and I suspect they've already done 18 this, that they go through the answer with respect to that 19 matter. I do know that there is an admission in the 20 complaint, or admissions, I should say, concerning there 21 being three stock offerings. There is an admission as to 22 the total amount of money realized from those stock 23 offerings. There's an admission, I believe, that the 24 investors were residents of 21 of our 50 states. And I 25 think there may be admissions as to the time frames, I</p>

<p style="text-align: right;">135</p> <p>1 believe certainly as to some, perhaps all of the three.</p> <p>2 So two items of the prima facie case, although</p> <p>3 not admissible, complements of the summary judgment</p> <p>4 decision rendered in September of 2004, are clearly</p> <p>5 established via admissions made in the answer. And I'm</p> <p>6 prepared to take judicial notice of that at any point.</p> <p>7 I would tell the jury, in fact, there is no</p> <p>8 dispute that there is no registration statement in this</p> <p>9 case, and to the extent there is further specificity</p> <p>10 concerning the so-called prima facie elements that are</p> <p>11 elucidated by the complaint and more appropriately the</p> <p>12 answer, I'm prepared to take judicial notice of that. And</p> <p>13 we can discuss later how that could be done, but I could</p> <p>14 do it in a preliminary instruction to the jury so they</p> <p>15 understand what the issues are. So there's different ways</p> <p>16 it could be done.</p> <p>17 With respect to the interstate commercial</p> <p>18 component of the prima facie case, that is addressed in</p> <p>19 paragraph 93 of the complaint, with the response to that</p> <p>20 paragraph found in paragraph 93 of the answer. It is my</p> <p>21 recollection that there is not an admission by the</p> <p>22 defense. Whether the mails were used or the telephones</p> <p>23 were used or some other means of interstate commerce or</p> <p>24 implicating interstate commerce, to that extent it's</p> <p>25 debatable.</p>	<p style="text-align: right;">137</p> <p>1 back in 2007.</p> <p>2 The juxtapositioning of the facts in this case,</p> <p>3 thus, to the extent they've been thus far presented to the</p> <p>4 Court and most of the factual presentations made in the</p> <p>5 summary judgment motions previously alluded to with the</p> <p>6 test to determine whether there is integration, it would</p> <p>7 appear there is clearly integration.</p> <p>8 Just to step back for a moment. In the Court's</p> <p>9 decision of 9/24/07, on page 8 there is a recitation of</p> <p>10 the elements that bear on the question of integration with</p> <p>11 a number of cases cited, one of which is SEC against</p> <p>12 Cavanagh, C-A-V-A-N-A-G-H, 155 F.3d 129, and the relevant</p> <p>13 language appearing at 363. The lower court case was</p> <p>14 decided in the Southern District of New York, and the work</p> <p>15 products of the judge in the Southern District of New York</p> <p>16 was affirmed under 155 F.3d 121 of the Second Circuit in</p> <p>17 1998.</p> <p>18 Now, Mr. Knight raises the point and has</p> <p>19 certainly more than a modicum of legitimacy that the</p> <p>20 question of 508 was decided back in 2007. The rules set</p> <p>21 forth the requirements for reargument, and I was not asked</p> <p>22 to revisit this subject until many years had passed.</p> <p>23 Thus, the application for reconsideration was denied on</p> <p>24 the ground that it was untimely.</p> <p>25 However, the SEC takes the position that, all</p>
<p style="text-align: right;">136</p> <p>1 From reviewing papers that have been submitted,</p> <p>2 it appears there will be a number of witnesses who will</p> <p>3 testify. Some of those witnesses will be investors, so</p> <p>4 the interstate commerce element will be elicited from</p> <p>5 them, if in fact interstate commerce was implicated.</p> <p>6 Now, the next question I want to address</p> <p>7 concerns section or Rule 508(a). That subject is</p> <p>8 addressed, as alluded to earlier, in the Court's September</p> <p>9 24, 2007, decision.</p> <p>10 Actually, before I go to that issue, I'll back</p> <p>11 up on the question of integration.</p> <p>12 On the question of integration -- I'm sorry.</p> <p>13 I've read the answer in conjunction with the</p> <p>14 complaint. When the plaintiffs review the document again,</p> <p>15 and I know they've reviewed it many times, if in fact</p> <p>16 there are admissions as to the dates and times -- I think</p> <p>17 there are. But if that is true, then the question is:</p> <p>18 What is the law that applies to integration? What are the</p> <p>19 factors that the Court must concern in determining whether</p> <p>20 serial offerings should be counted as one for purposes of</p> <p>21 the material rule, that being Rule 504?</p> <p>22 In one of the submissions by the SEC, the</p> <p>23 various criteria that the Court must consider or facts the</p> <p>24 Court must consider whether there is integration is set</p> <p>25 forth. That is also gone over in the Court's decision</p>	<p style="text-align: right;">138</p> <p>1 right, let's assume that is correct, which it is. They</p> <p>2 are making a motion in limine and they are saying, Judge,</p> <p>3 if it is clear as a matter of law that 508(a), more</p> <p>4 particularly the exemption under 508(a), is not available</p> <p>5 in an action by the SEC by way of an enforcement action as</p> <p>6 succinct from a private litigant trying to recovery money,</p> <p>7 the Court has an obligation to take another look if for no</p> <p>8 other reason than to simplify, consistent with the law,</p> <p>9 the task that is to be presented to the jury who will</p> <p>10 serve on this case.</p> <p>11 My point is, I'm not considering this as an</p> <p>12 application for reconsideration under Rule 56. I'm</p> <p>13 considering it consistent with my obligations as the trial</p> <p>14 judge as an in limine motion. If this was debatable, that</p> <p>15 would be one case; however, it is not.</p> <p>16 When we discussed this back in 2007, the Court</p> <p>17 cited a number of cases, all of which involved private</p> <p>18 litigants. Based on those cases and the lack of any</p> <p>19 elucidation of the point which suggested a contrary</p> <p>20 conclusion by the SEC, we reached a certain conclusion.</p> <p>21 It turns out that that conclusion is wrong.</p> <p>22 The rule itself provides that the exemption set</p> <p>23 forth in 508(a), the good faith, is not applicable to an</p> <p>24 enforcement action by the SEC. That is precisely what we</p> <p>25 have here. That conclusion is evident from a reading of</p>

<p style="text-align: right;">139</p> <p>1 the rule, the impact of the rule is free of ambiguity and</p> <p>2 indicates that what I just said is accurate.</p> <p>3 I also note just parenthetically that there is a</p> <p>4 treatise available through Westlaw, which treatise is</p> <p>5 entitled, as I understand it, "Treatise on the Law of</p> <p>6 Security Regulations." And there's an indication that the</p> <p>7 database has been updated as of July of 2014.</p> <p>8 In chapter four there's an indication -- well,</p> <p>9 chapter four is entitled "Exemptions From 1933 Act</p> <p>10 Registration." And in footnote 24 to that chapter, which</p> <p>11 was written by Thomas Lee Hazen, there is an indication</p> <p>12 that the rule presently under discussion is, as its text</p> <p>13 indicates, unavailable in the context such as we have</p> <p>14 here; in other words, an enforcement action by the SEC.</p> <p>15 So the point is, in a nutshell, in this issue</p> <p>16 and prescinding from the integration issue for a moment,</p> <p>17 the Court's conclusions in its September 2007 decision as</p> <p>18 part of its analytical process which led to the denial of</p> <p>19 defendant's summary judgment motion do not constitute</p> <p>20 conclusions which preclude the subject from being</p> <p>21 presented to the jury. However, at least two, or possibly</p> <p>22 all three, of the elements of a prima facie case which</p> <p>23 then shifts the burden to the defendant to prove an</p> <p>24 exemption are found, or is -- I forget what it is -- but</p> <p>25 in any event, can be found in the answer.</p>	<p style="text-align: right;">141</p> <p>1 facts as they are, that comes out before the jury.</p> <p>2 In other words, I'll not find there is</p> <p>3 integration at this point, but if the information is in</p> <p>4 the admissions, or if not in the admissions in whole or in</p> <p>5 part, in the testimony, and it dovetails with the evidence</p> <p>6 presently before me, I'll rule as a matter of law there is</p> <p>7 integration.</p> <p>8 Why? Because no reasonable trier of fact under</p> <p>9 that hypothetical scenario could reach a contrary</p> <p>10 conclusion, and that is really a legal issue for me in any</p> <p>11 event. I'll not ask the jury if there is integration.</p> <p>12 But to the extent there may be some nuances, could present</p> <p>13 a jury question -- well, I'll leave it at that. I hope</p> <p>14 both sides understand.</p> <p>15 So the SEC, either through admissions in the</p> <p>16 answer or by testimony, if they can establish whether</p> <p>17 these three serial things, stock offerings occurred,</p> <p>18 etcetera, and if that is the total amount of the evidence,</p> <p>19 basically that will result in a determination of</p> <p>20 integration. And that means for my purposes, my</p> <p>21 understanding of Rule 504, these three offerings are</p> <p>22 aggregated.</p> <p>23 Now, another item that we have to go through,</p> <p>24 and will, concerns the letters of intent. There is a</p> <p>25 dispute between the parties as to the admissibility of</p>
<p style="text-align: right;">140</p> <p>1 There are a number of admissions in the answer</p> <p>2 which directly are on point on the subject and in fact</p> <p>3 resolve certain disputes.</p> <p>4 Under 508, that exemption is not available to</p> <p>5 Mr. Knight. It has no applicability to Mr. Knight, and</p> <p>6 therefore that would not be placed before the jury.</p> <p>7 On the question of the integration, I think I</p> <p>8 may have gone through this in part, and if I have, bear</p> <p>9 with me.</p> <p>10 As I indicated earlier, I think, if all of the</p> <p>11 elements or all of the factors which bear on whether</p> <p>12 integration occurred through these three serial offerings</p> <p>13 had been admitted in the answer, then -- and that's the</p> <p>14 factual underpinnings for the criteria -- then what</p> <p>15 happens is, the matter is before me.</p> <p>16 If no further evidence is presented by</p> <p>17 Mr. Knight to suggest that these three offerings, to whom</p> <p>18 they were made, during what time frame, the purpose of the</p> <p>19 offering, unless further information is presented on those</p> <p>20 five factors which are set forth in the Cavanagh case,</p> <p>21 I'll be compelled to find there was integration.</p> <p>22 So I'm not closing the door. If there is</p> <p>23 something I don't understand and hasn't been presented,</p> <p>24 and it can be presented without a violation of one of the</p> <p>25 numerous discovery orders in this case, fine. But the</p>	<p style="text-align: right;">142</p> <p>1 certain exhibits which had been mentioned in the record.</p> <p>2 They were reiterated time and time again; in other words,</p> <p>3 the exhibit designations on Wednesday. And I believe they</p> <p>4 are G, J -- I forget the last one.</p> <p>5 What is the last one?</p> <p>6 MR. KNIGHT: V like Victor.</p> <p>7 THE COURT: Thank you, Mr. Knight.</p> <p>8 Now, the SEC's position is that a review of</p> <p>9 these documents indicates that they are not letters of</p> <p>10 intent. We had a decision about what is a letter of</p> <p>11 intent on Wednesday. It was agreed by Mr. Knight and by</p> <p>12 the SEC that the definition of "letters of intent" set</p> <p>13 forth in Black's Law Dictionary is applicable in the sense</p> <p>14 it is correct.</p> <p>15 So against that backdrop, I think it is</p> <p>16 important to look at two causes of action here. These are</p> <p>17 the two causes of action which remain viable.</p> <p>18 The first cause of action charges a violation,</p> <p>19 among other things, of section 17(a) of the securities</p> <p>20 act.</p> <p>21 Section 17(a) is found in 15 U.S.C. Section</p> <p>22 77q(a).</p> <p>23 The elements of that cause of action are fairly</p> <p>24 straightforward: one, a misrepresentation or omission</p> <p>25 regarding material facts or other fraudulent conduct; two</p>

<p style="text-align: center;">143</p> <p>1 was scienter; and, three, in the offer or sale of the 2 security. 3 Now, that cause of action which partially sounds 4 in fraud concerns a material misrepresentation or 5 omission. To the extent that Mr. Knight has letters of 6 intent which are found in the four exhibits we mentioned 7 yesterday, three of which we mentioned today, which is 8 AAH, which is either entitled a letter of intent or it 9 arguably fits within the Black's dictionary definition of 10 letter of intent, I will permit him over the objection of 11 the SEC to introduce the document. 12 I will tell the jury that the offer is made and 13 the document is received solely with respect to the first 14 cause of action. 15 It is my understanding that -- it depends how 16 the proof comes out, but it's my understanding that the 17 SEC can prove its case, if in fact they can, without any 18 reference under the second cause of action to these 19 letters of intent. But again, it is very hard, as I've 20 said to the attorneys before and Mr. Knight, it is very 21 hard to render evidentiary -- or make evidentiary rulings 22 in the abstract. 23 As we all know, what develops at a trial 24 sometimes is not predictable. Items of proof are adduced. 25 Certainly the Court may anticipate it, perhaps others. So</p>	<p style="text-align: center;">145</p> <p>1 these are not letters of intent. There's just not enough 2 specificity. Again, we're talking about somebody's 3 mind-set, scienter, under the first cause of action. 4 I think we've covered everything we have to 5 cover today, but we've tried to cover a lot in a 6 relatively short period of time, and I might be wrong. I 7 don't want to go over something that we've already gone 8 into, but if we skip something, obviously that should be 9 addressed. 10 So first I'll check with the plaintiff. What 11 have we skipped, if anything? 12 MR. VASILESCU: May I get some clarification, 13 your Honor? 14 THE COURT: Yes. 15 MR. VASILESCU: Let's first start with the 16 letter of intent issue. 17 If I correctly understand your Honor, your Honor 18 said as to the first claim Mr. Knight can introduce 19 documents prior to September 21, 1999 -- 20 THE COURT: Yes. 21 MR. VASILESCU: -- that say "letter of intent" 22 on it. 23 THE COURT: Yes. 24 MR. VASILESCU: So from our perspective, one of 25 the issues here is that as discussed the other day,</p>
<p style="text-align: center;">144</p> <p>1 we have to see what develops. 2 In a nutshell, under the first cause of action, 3 an aspect of that -- or one of the elements of proof is 4 scienter. He's charged with making misrepresentations. 5 To the extent, for instance, that he has 6 documents entitled "letter of intent" and they are 7 signed and -- this is very important -- that they were 8 signed on or before September 21, 1999, he should be able 9 to admit that. He should be able to basically argue to 10 the jury: I didn't know what the Black's Law Dictionary 11 definition was. I put the title, and, yes, it was most of 12 these, on the letter of intent. I have documents that 13 were signed. Perhaps I have an erroneous belief that they 14 constituted letters of intent. 15 Under that scenario, that would be appropriate 16 for the jury to hear. 17 Now, the jury again will have a definition of 18 what a letter of intent is and everything else, and they 19 will be able to consider it for the purposes of the first 20 cause of action, not the second. 21 The pivotal thing is we have to remember the 22 date. At the appropriate time I'll entertain requests to 23 charge concerning the subject because it is not indicated. 24 Looking at these documents independent of the causes of 25 action or the particular element of the causes of action,</p>	<p style="text-align: center;">146</p> <p>1 Mr. Knight does refer to some documents that bear the name 2 "letter of intent" on it. On their face they all appear 3 to be documents with fax markings in 2000, after September 4 of '99. 5 THE COURT: To be honest with you, I will 6 withdraw that. It was a poor phrase. Withdrawn. 7 It is his burden, to the extent he must 8 introduce these, to lay the proper foundation. The 9 foundation requires that he produce information that 10 indicates that it was prior to that date. If it was 11 afterwards, that would seem he would have a problem in 12 that regard, unless there is something I'm missing. 13 When we discussed the other dates, some of them 14 are dated but most are not, and they have a stamp on it. 15 They have a fax, rather, date. 16 MR. VASILESCU: That's correct, your Honor. 17 THE COURT: Unless Mr. Knight can show in fact, 18 notwithstanding a fax date, they were actually sent 19 earlier, they are not admissible. 20 MR. VASILESCU: Just to be clear, your Honor, we 21 discussed the other day, and I think you were referencing 22 today, there were two documents which we say are just 23 correspondence which he marked as exhibits and referenced 24 as letters of intent that are prior to September 21, 1999, 25 but do not bear any sort of label "letters of intent."</p>

<p style="text-align: right;">147</p> <p>1 THE COURT: Well, his labels control. And I</p> <p>2 can't go through the nuances, although I'll endeavor to do</p> <p>3 it, but somehow there has to be information to show that</p> <p>4 these things predate. Now if a party adds a date, that</p> <p>5 wouldn't do it.</p> <p>6 Now, as you know, there are different ways you</p> <p>7 can try to show a date. You can have a situation where</p> <p>8 the recipient of the document would say, I actually got</p> <p>9 that in May. I know somebody put down April, but that's</p> <p>10 not when I got it. You know what I mean.</p> <p>11 MR. VASILESCU: Let me clarify, your Honor.</p> <p>12 THE COURT: Yes.</p> <p>13 MR. VASILESCU: My understanding from what your</p> <p>14 ruling here is, and I may be wrong, is that to the extent</p> <p>15 that he's relying on correspondence from companies prior</p> <p>16 to September 21, 1999, that say nothing about letters of</p> <p>17 intent on them, he cannot rely on those and argue that</p> <p>18 those are the letters of intent that he relied on.</p> <p>19 THE COURT: I thought I addressed that; maybe I</p> <p>20 didn't. My point on that is as follows: If it says</p> <p>21 "letter of intent," that would suggest that possibly, even</p> <p>22 though he put -- in most instances Mr. Knight wrote</p> <p>23 "letter of intent."</p> <p>24 I didn't understand that. I thought basically</p> <p>25 that Mr. Knight or someone associated with iShop wrote a</p>	<p style="text-align: right;">149</p> <p>1 MR. VASILESCU: That's very helpful.</p> <p>2 THE COURT: Just object, and we'll address it</p> <p>3 out of the presence of the jury. And I'll hear from both</p> <p>4 sides, and I'll make a determination whether it seems to</p> <p>5 fall within the purview of the Blacks's Law Dictionary</p> <p>6 definition.</p> <p>7 MR. VASILESCU: Addressing the first point under</p> <p>8 section 5, your Honor, to some extent my prior counsel and</p> <p>9 us were sort of confused as to the import of that decision</p> <p>10 from 2007 in terms of what was still in dispute.</p> <p>11 To the extent there is some of those elements</p> <p>12 that we are going to present to the jury, I would like to</p> <p>13 get some guidance. There were filings made, including</p> <p>14 affidavits by Mr. Knight, in opposition to summary</p> <p>15 judgment with other declarations, with documents and</p> <p>16 testimony from his cocounsel -- I mean his codefendants in</p> <p>17 that case.</p> <p>18 Is it appropriate for us -- I think certainly</p> <p>19 with Mr. Knight, since it is part of an affidavit in the</p> <p>20 record in this case, that we can use it as an admission by</p> <p>21 him as to his position, because these were affidavits</p> <p>22 submitted by Mr. Knight.</p> <p>23 And also, some of the other documents that were</p> <p>24 put in by declaration in that case. That would streamline</p> <p>25 the litigation.</p>
<p style="text-align: right;">148</p> <p>1 letter to these various suppliers and they responded.</p> <p>2 Well, it turns out that I did not understand</p> <p>3 that. I understand it now, but I didn't at the time.</p> <p>4 So the point is, it is self-labeled to some</p> <p>5 extent. But that doesn't go to the weight or</p> <p>6 admissibility.</p> <p>7 Let's assume that he has something that predates</p> <p>8 the September 1999 date. And if you take the contents of</p> <p>9 that document and juxtaposition it against the agreed-upon</p> <p>10 definition of what is a letter of intent, and if it seems</p> <p>11 to fall within that category, then I would permit that to</p> <p>12 go in as well.</p> <p>13 On the other hand, if it didn't satisfy -- we're</p> <p>14 talking about the ones without the label. If it didn't</p> <p>15 satisfy, it would not go in.</p> <p>16 MR. VASILESCU: A little bit of guidance, your</p> <p>17 Honor.</p> <p>18 It's our position these two documents do not</p> <p>19 satisfy Black's Law Dictionary definition. So</p> <p>20 procedurally, if he seeks to introduce those and we think</p> <p>21 they don't meet it, and they don't have the words "letter</p> <p>22 of intent" on it, can we object, approach the bench, and</p> <p>23 at sidebar say to your Honor, look at it, it doesn't meet</p> <p>24 it. Please preclude him from referencing it to the jury.</p> <p>25 THE COURT: Absolutely.</p>	<p style="text-align: right;">150</p> <p>1 THE COURT: I think we ought to approach these</p> <p>2 problems somewhat while they are unfolding. But if you</p> <p>3 have a deposition with an admission, you know, you can</p> <p>4 follow the appropriate procedure. You would have to</p> <p>5 establish that in fact that was the answer he gave; that</p> <p>6 he was deposed; he gave that answer; he never sought to</p> <p>7 correct it. And that would go before the jury as it would</p> <p>8 in any case on basically credibility.</p> <p>9 With the answers, that's a little beyond</p> <p>10 credibility. That's an admission.</p> <p>11 Whether a deposition statement -- it could be an</p> <p>12 admission, but we'll have to address that as we go along.</p> <p>13 It's hard to do in the abstract.</p> <p>14 MR. VASILESCU: Specifically I was representing</p> <p>15 not just depositions, but he put in a signed affidavit,</p> <p>16 and his counsel put in papers in that area.</p> <p>17 Shall we move on to other topics?</p> <p>18 THE COURT: I hope we don't have much more to</p> <p>19 do.</p> <p>20 MR. KNIGHT: Your Honor, may I get a chance to</p> <p>21 address that?</p> <p>22 THE COURT: You will get a chance. Typically</p> <p>23 when I ask to hear from the parties, I always look to the</p> <p>24 plaintiff's table first and then to the defense. And in a</p> <p>25 criminal case -- it's just the procedure I follow. It's</p>

<p style="text-align: center;">151</p> <p>1 not one party has something more significant to say than</p> <p>2 the other, in my judgment.</p> <p>3 Yes, sir.</p> <p>4 MR. VASILESCU: Your Honor, in terms of those</p> <p>5 two issues, the plaintiff has asked its questions to the</p> <p>6 Court for clarity, so we can move on.</p> <p>7 We'd like to address some slides that Mr. Knight</p> <p>8 sent to us early this morning that he intends to use in</p> <p>9 his opening. Some of these slides contain material we</p> <p>10 talked about the other day which goes contrary to the</p> <p>11 Judge's ruling.</p> <p>12 THE COURT: Mr. Knight?</p> <p>13 MR. KNIGHT: I would like to show the other</p> <p>14 side's slides as well.</p> <p>15 THE COURT: We'll go into the slides as well.</p> <p>16 We'll take a ten-minute recess at this point.</p> <p>17 (Whereupon, a recess was taken.)</p> <p>18 THE COURT: If everybody would be seated,</p> <p>19 please.</p> <p>20 At this point there's a question about certain</p> <p>21 slides that each side would like to use during the course</p> <p>22 of their opening statements, and each side is asking me to</p> <p>23 view the other side's and see if I feel they are</p> <p>24 appropriate for opening statements.</p> <p>25 How shall we do that mechanically?</p>	<p style="text-align: center;">153</p> <p>1 MR. KNIGHT: I have it electronically, yes, your</p> <p>2 Honor.</p> <p>3 THE COURT: All right. I've looked at these.</p> <p>4 MR. KNIGHT: Your Honor, I can show you mine on</p> <p>5 the computer, because I don't have it printed out. I</p> <p>6 didn't know it would come up.</p> <p>7 THE COURT: Let me go through these first.</p> <p>8 The question is, which ones do you object to?</p> <p>9 And if you can refer to the page numbers which appear on</p> <p>10 the lower right-hand corner.</p> <p>11 MR. KNIGHT: Yes, your Honor.</p> <p>12 I didn't necessarily object to any of these</p> <p>13 slides. I was just very surprised that the SEC used the</p> <p>14 language of "lied," "lied," he kept "lying," all of these</p> <p>15 things with -- is "lies." I thought it would be more</p> <p>16 professional misrepresentation, or not correct</p> <p>17 representation, so I responded in a similar manner.</p> <p>18 THE COURT: Okay.</p> <p>19 With respect to these particular ones, you don't</p> <p>20 object because you are underwhelmed by their use of the</p> <p>21 word "lies."</p> <p>22 MR. KNIGHT: I prepared a response to those, so</p> <p>23 I guess it would be my response. I don't call it an</p> <p>24 objection. This is my side of the story with respect to</p> <p>25 the slides, if you want to call it that.</p>
<p style="text-align: center;">152</p> <p>1 MR. VASILESCU: Do you have paper copies of your</p> <p>2 slides to hand up to the Court?</p> <p>3 MR. KNIGHT: I e-mailed to you. I believe you</p> <p>4 have a copy on your desk.</p> <p>5 MR. VASILESCU: But the Judge needs a copy.</p> <p>6 MR. KNIGHT: My slides are in response to the</p> <p>7 plaintiff's, so if the Judge would see the plaintiff's</p> <p>8 first, then mine will make more sense.</p> <p>9 THE COURT: Good.</p> <p>10 MR. VASILESCU: Your Honor, this is the paper</p> <p>11 form of the slides, and it pretty much captures all the</p> <p>12 materials in the PowerPoint. But there are certain</p> <p>13 sentences that drop in after others, so they are not all</p> <p>14 there at the same time.</p> <p>15 MR. KNIGHT: I have one on my computer on my</p> <p>16 desk.</p> <p>17 THE COURT: I've reviewed these. I probably</p> <p>18 should have one copy marked as Court's Exhibit 1.</p> <p>19 Do you have extra copies of these?</p> <p>20 MR. DUNNIGAN: I do, your Honor.</p> <p>21 THE COURT: We can do it later. I want to make</p> <p>22 sure there is something on the record.</p> <p>23 MR. DUNNIGAN: I can give it to you right now.</p> <p>24 I'll just write Court's Exhibit 1.</p> <p>25 And Mr. Knight has a copy of these?</p>	<p style="text-align: center;">154</p> <p>1 THE COURT: It really isn't an expression --</p> <p>2 from the SEC's point of view with respect to the slides,</p> <p>3 they have to have a good-faith belief that the information</p> <p>4 that is set forth in the slides, number one, help the jury</p> <p>5 follow the evidence as it unfolds, and then, secondly,</p> <p>6 that the information that is provided will be developed</p> <p>7 during the course of the trial. It doesn't mean it</p> <p>8 necessarily will be established, because there may be a</p> <p>9 dispute.</p> <p>10 So the first part, I suspect, will help the</p> <p>11 jury, and I think that is probably true.</p> <p>12 What about the idea of lies about foreign</p> <p>13 offices? I'm looking at page 7. That page is entitled at</p> <p>14 the top of the page "Misrepresentations and Omissions to</p> <p>15 Investors." And then it is "lies about foreign offices."</p> <p>16 The SEC feels it is appropriate.</p> <p>17 MR. DUNNIGAN: Yes, your Honor. If you look at</p> <p>18 the next page, it is a blowup of the September 21, 1999,</p> <p>19 offering memorandum, PX 2. In particular, the bottom</p> <p>20 paragraph there, it says the company maintains its</p> <p>21 corporate headquarters in Port Washington, New York, and</p> <p>22 also has branch offices in Hong Kong, Singapore, and</p> <p>23 Sidney, Australia, and soon will be opening a branch</p> <p>24 office in Tokyo, Japan.</p> <p>25 This is one of the lies or misrepresentations</p>

<p style="text-align: right;">155</p> <p>1 that was told to investors.</p> <p>2 MR. KNIGHT: Any way I can get a copy of that</p> <p>3 from you? Do you have an extra copy?</p> <p>4 THE COURT: You know, I can give you,</p> <p>5 Mr. Knight, the copy I have because I have another copy</p> <p>6 which I've marked as a Court's exhibit, and I'll use that.</p> <p>7 MR. VASILESCU: Your Honor, if I may add.</p> <p>8 THE COURT: Yes.</p> <p>9 MR. VASILESCU: This is a jury of lay people,</p> <p>10 and it is common in SEC cases to talk about</p> <p>11 misrepresentations and omissions. And essentially in</p> <p>12 layman's terms, those are lies. It's a way to communicate</p> <p>13 to the jury using a layman's description what are in the</p> <p>14 security's which are prohibited from fraud.</p> <p>15 MR. KNIGHT: Your Honor, I don't object to that.</p> <p>16 I also use layman's terms in my slides, which I'm not</p> <p>17 objecting to.</p> <p>18 THE COURT: He says no problem with these,</p> <p>19 including the word "lies," according to Mr. Knight. But</p> <p>20 that is dependent basically on the jury being privy to his</p> <p>21 characterization of certain activities.</p> <p>22 MR. KNIGHT: Just use the same language, your</p> <p>23 Honor, that's all.</p> <p>24 THE COURT: Have you seen his?</p> <p>25 MR. DUNNIGAN: We have.</p>	<p style="text-align: right;">157</p> <p>1 I'm personally fine with Mr. Knight saying that the SEC</p> <p>2 isn't highlighting certain evidence that is in the</p> <p>3 evidence, but once he starts using pejorative terms that</p> <p>4 show intent, like "lying," then he's accusing us of</p> <p>5 misconduct in this case, and that is out of bounds for a</p> <p>6 number of reasons.</p> <p>7 One, he did bring a lawsuit which was dismissed.</p> <p>8 And he hasn't filed in his answer counterclaims of that</p> <p>9 which are appropriate to be tried before this jury. So I</p> <p>10 think those generally go far afield the repeated use of</p> <p>11 the SEC lying here.</p> <p>12 MR. KNIGHT: Your Honor, can we go through this</p> <p>13 slide by slide? Let's look at their slide and then mine</p> <p>14 in response, and I'll clarify.</p> <p>15 THE COURT: No. What I'll do is on the SEC</p> <p>16 slides, there is language in there -- I don't think it is</p> <p>17 appropriate in an opening.</p> <p>18 Now, I do recognize this is what the IRS or the</p> <p>19 SEC believes would be established.</p> <p>20 On number 2 it says "the boss." Now, the mere</p> <p>21 fact that may be contested doesn't mean that the SEC can't</p> <p>22 take that position. But I'm not particularly crazy about</p> <p>23 the word "boss."</p> <p>24 I think having now -- assuming this is accurate,</p> <p>25 or assuming that the SEC has information which indicates</p>
<p style="text-align: right;">156</p> <p>1 MR. VASILESCU: And I can address that.</p> <p>2 If I may approach the bench.</p> <p>3 THE COURT: Yes.</p> <p>4 MR. VASILESCU: These slides were not numbered,</p> <p>5 so these are Mr. Knight's slides in paper form. But I</p> <p>6 numbered them in the bottom left corner, so we can</p> <p>7 reference them more easily, 1 through 12. 12 pages.</p> <p>8 Preliminarily, I don't think the observation</p> <p>9 that he does use the word that the SEC is lying, and I do</p> <p>10 have a problem with that, it has been adjudicated what</p> <p>11 defenses Mr. Knight can raise, and he brought that other</p> <p>12 lawsuit accusing the SEC of misconduct which was</p> <p>13 dismissed.</p> <p>14 MR. KNIGHT: That's not referenced here.</p> <p>15 THE COURT: Only one person at a time.</p> <p>16 MR. VASILESCU: So we have presently fraud</p> <p>17 claims pending against Mr. Knight that are appropriately</p> <p>18 recognized and actionable and going to trial. So to the</p> <p>19 extent we're characterizing the claims as Mr. Knight</p> <p>20 making lies while at iShop to investors, I think that is</p> <p>21 within the bounds of the claims.</p> <p>22 When Mr. Knight uses the terms "the SEC is</p> <p>23 engaging in lies" and uses other words which go to</p> <p>24 arguments he made before in these other cases that we</p> <p>25 somehow suppressed evidence and engaged in misconduct --</p>	<p style="text-align: right;">158</p> <p>1 that he's a cofounder, which he admits, the amount of</p> <p>2 shares he owns, and was the chairman of the board at one</p> <p>3 time, that's fine.</p> <p>4 I'll take out the word "boss." We just want to</p> <p>5 give them an overview. We don't want to have a final</p> <p>6 argument. You know, in summation, that is a different</p> <p>7 story, but this is the opening.</p> <p>8 The idea of the lies -- for instance, looking at</p> <p>9 item number 7, it reads, the caption, "Misrepresentations</p> <p>10 and Omissions to Investors."</p> <p>11 One -- rather than having lies about foreign</p> <p>12 offices, I'd rather have something, one, about the</p> <p>13 existence or the number of foreign offices.</p> <p>14 MR. VASILESCU: It's our position, your Honor,</p> <p>15 there were no foreign offices, and those statements were</p> <p>16 an outright falsehood.</p> <p>17 THE COURT: Just put existence, about the</p> <p>18 existence of foreign offices. In other words, that's the</p> <p>19 title you can have, one, about the existence of foreign</p> <p>20 offices. The jury will understand it. But this way, for</p> <p>21 an opening statement, I'd rather have them hear the</p> <p>22 evidence and let them draw some of the conclusions.</p> <p>23 MR. VASILESCU: Understood, your Honor. We were</p> <p>24 trying to give them a preview of what we'll establish in</p> <p>25 the case.</p>

<p style="text-align: right;">159</p> <p>1 THE COURT: I have no problem with that, and I</p> <p>2 think that does that, what you believe will be shown.</p> <p>3 MR. VASILESCU: Can we say there were no foreign</p> <p>4 offices?</p> <p>5 THE COURT: Yes, you can say that.</p> <p>6 Let's think how to do it though, to make sure.</p> <p>7 Misrepresentations to investors. Let's see. So</p> <p>8 the case that there were foreign offices, something like</p> <p>9 that, or the representation, even though that is a</p> <p>10 restatement, but -- why don't you come up with the</p> <p>11 language. You can tell me now.</p> <p>12 MR. VASILESCU: To be clear, we'd like to</p> <p>13 communicate that our --</p> <p>14 THE COURT: I know that, but I want to knock out</p> <p>15 the word "lies," "boss," some of these conclusory</p> <p>16 statements which are somewhat inflammatory.</p> <p>17 I understand your position, what you believe the</p> <p>18 evidence will show. And then the evidence will be before</p> <p>19 them. And in summation, any label attacked is against the</p> <p>20 background as adduced, as distinct from the evidence you</p> <p>21 anticipate will be adduced. And I understand that.</p> <p>22 I'm not particularly good with technology, but I</p> <p>23 don't think this is a major effort by you.</p> <p>24 MR. VASILESCU: We can edit it, your Honor,</p> <p>25 absolutely.</p>	<p style="text-align: right;">161</p> <p>1 MR. VASILESCU: Not his idea, but there will be</p> <p>2 testimony from witnesses that he was not only the</p> <p>3 chairman, he was calling most of the shots, controlling</p> <p>4 money and firing people and -- essentially during the</p> <p>5 period --</p> <p>6 THE COURT: Also, one time the CEO, supposedly.</p> <p>7 Weren't you the CEO one time?</p> <p>8 MR. KNIGHT: At the time they claim,</p> <p>9 Mr. Neissani, N-E-I-S-S-A-N-I --</p> <p>10 THE COURT: Take out the word "boss."</p> <p>11 MR. VASILESCU: Okay, your Honor.</p> <p>12 THE COURT: They'll know what you are talking</p> <p>13 about.</p> <p>14 So as far as the SEC's exhibits they would like</p> <p>15 to show to the jury during this slide show, is there any</p> <p>16 further problem other than what we've discussed?</p> <p>17 MR. KNIGHT: Yes, your Honor. Now that I look</p> <p>18 at it, I want to go over a couple of things.</p> <p>19 (Continued.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">160</p> <p>1 THE COURT: In the old days this would be a</p> <p>2 disaster from counsel's point of view.</p> <p>3 MR. DUNNIGAN: Not a problem, your Honor.</p> <p>4 THE COURT: Let's figure it out, and I'll give</p> <p>5 input too. But that addresses your primary concern, these</p> <p>6 loaded phrases in the opening.</p> <p>7 MR. KNIGHT: And I'll do the same, your Honor.</p> <p>8 MR. VASILESCU: I have some other objections</p> <p>9 with these slides.</p> <p>10 THE COURT: Well, let's go through with this.</p> <p>11 I'm looking at the SEC's slides.</p> <p>12 So we're talking about where the word "lies" is</p> <p>13 used, I see again, on page 15. I guess there are some</p> <p>14 others -- you know, if you don't want to -- even though</p> <p>15 there are misrepresentations about foreign offices, use of</p> <p>16 investor funds, misrepresentations about status of iShop's</p> <p>17 websites, take out the "lies."</p> <p>18 MR. VASILESCU: We should not use the word</p> <p>19 "lies" at all?</p> <p>20 THE COURT: Yes.</p> <p>21 And also the word "boss." Take that out.</p> <p>22 MR. VASILESCU: All right.</p> <p>23 THE COURT: I think there's an admission in the</p> <p>24 answer that -- and it was -- this is your idea,</p> <p>25 Mr. Knight.</p>	<p style="text-align: right;">162</p> <p>1 THE COURT: Yes.</p> <p>2 MR. KNIGHT: They show here on page 5 a copy of</p> <p>3 a private placement memorandum by iShop. And the same</p> <p>4 thing on page 6. They explain the dates, talk about</p> <p>5 foreign offices, and then it highlights that. So we'll</p> <p>6 move on with that.</p> <p>7 The next one is the use of proceeds on page 12.</p> <p>8 THE COURT: Wait a minute. I didn't understand</p> <p>9 the objections to page 5 and 6. What is that?</p> <p>10 MR. KNIGHT: I didn't get a chance to come up to</p> <p>11 your Honor, but I found a copy of the business plan that</p> <p>12 has that exact exhibit on page 30 with the foreign offices</p> <p>13 addresses.</p> <p>14 I filed a motion with the Court, and I wanted to</p> <p>15 give you and them a copy of these foreign offices. So I</p> <p>16 never had a chance to present it. But I'd like to give</p> <p>17 you a copy.</p> <p>18 MR. VASILESCU: He's not objecting to the</p> <p>19 slides. He's now referencing additional documents you</p> <p>20 addressed the other day that it sounds he wants to get in</p> <p>21 again.</p> <p>22 MR. KNIGHT: Under Rule 106 they want an exact</p> <p>23 document, and I found a copy. I did a lot of searching,</p> <p>24 but I found it.</p> <p>25 THE COURT: Page 30 and 26, this has to with on</p>

<p style="text-align: center;">163</p> <p>1 the various business plans.</p> <p>2 MR. KNIGHT: Defendant's Exhibit AD, which your</p> <p>3 Honor said because it wasn't complete under Rule 106.</p> <p>4 THE COURT: I already ruled on that.</p> <p>5 MR. KNIGHT: Yes, your Honor.</p> <p>6 THE COURT: In other words, that will not go in.</p> <p>7 In other words, page 30 is what you have, and that's what</p> <p>8 you want to put in. Page 30, for the reasons indicated,</p> <p>9 is not admissible under 403.</p> <p>10 If you want to get something in some other way,</p> <p>11 I'll not preclude you on that. I'll not preclude you</p> <p>12 because I don't know what the foundation will be.</p> <p>13 MR. KNIGHT: Moving on to page 12, your Honor.</p> <p>14 MR. VASILESCU: To be clear, he doesn't have any</p> <p>15 objections other than the "lies" and the "boss."</p> <p>16 THE COURT: Is that a fair statement?</p> <p>17 MR. KNIGHT: No. We had international offices.</p> <p>18 We had the confirmation of e-mails --</p> <p>19 THE COURT: No, don't do this. You are a smart</p> <p>20 man, but you don't listen.</p> <p>21 They are allowed in their opening statement to</p> <p>22 say what they believe the evidence will show. They may be</p> <p>23 wrong; they may not get it in. There may be another side</p> <p>24 to the story.</p> <p>25 The jury will decide what the true facts are.</p>	<p style="text-align: center;">165</p> <p>1 the nature of the Court's ruling, so I'll not do it again.</p> <p>2 But if -- Mr. Knight has a right, if he thinks</p> <p>3 my decision is erroneous, to have it in the record so if</p> <p>4 there's an appeal, the appellate court can look and see</p> <p>5 what we were talking about. So for that purpose...</p> <p>6 So what we'll do is mark that as Court's</p> <p>7 Exhibit 2. It's not going before the jury, but --</p> <p>8 consistent with what has been said thus far, but it's to</p> <p>9 give some type of concreteness to Mr. Knight's objection</p> <p>10 concerning this issue.</p> <p>11 And this we'll mark again -- I'll mark the</p> <p>12 entire item. The item is motion to admit into evidence.</p> <p>13 MR. VASILESCU: Your Honor, we should note this</p> <p>14 is a lengthy document printed on fresh paper, and on its</p> <p>15 face it doesn't bear a date. This was never produced to</p> <p>16 us, offered at the eleventh hour on the eve of trial,</p> <p>17 Mr. Knight printing out some sort of document that frankly</p> <p>18 we don't know if he just generated it. When it was</p> <p>19 created, we have no idea. So on its face, you know, we</p> <p>20 note our objection.</p> <p>21 THE COURT: Your objection is noted.</p> <p>22 As I've said, I'm marking this as Court's</p> <p>23 Exhibit 2, and that is so that there will be included</p> <p>24 within the record the document he's asking me to receive</p> <p>25 into evidence.</p>
<p style="text-align: center;">164</p> <p>1 But if they have a good-faith belief whether this</p> <p>2 information will get to the jury, right or wrong --</p> <p>3 MR. KNIGHT: Your Honor, moving on to page 12,</p> <p>4 it shows use of proceeds. And basically what they've done</p> <p>5 is they really haven't shown the language below that. It</p> <p>6 says: The use of proceeds is at the discretion of the</p> <p>7 board of directors and management. These uses can change</p> <p>8 significantly, and basically stating the salaries.</p> <p>9 THE COURT: What I said a moment ago is equally</p> <p>10 applicable here.</p> <p>11 MR. KNIGHT: As long as I get to present my side</p> <p>12 of it, I have no problem, your Honor.</p> <p>13 THE COURT: You do.</p> <p>14 What else do you have, if anything?</p> <p>15 MR. KNIGHT: Never had a chance to address</p> <p>16 anything before. I was waiting, so I can give it to you</p> <p>17 and give them a copy.</p> <p>18 THE COURT: What is that?</p> <p>19 MR. KNIGHT: Initially, Defendant's Exhibit AD</p> <p>20 was objected to as an incomplete document, and I found a</p> <p>21 complete document. So I would like to submit it.</p> <p>22 MR. VASILESCU: My understanding, he's not</p> <p>23 talking about --</p> <p>24 THE COURT: I mean, this is probably the tenth</p> <p>25 time. I've already ruled on it. I've already explained</p>	<p style="text-align: center;">166</p> <p>1 MR. KNIGHT: Your Honor, there's one more thing.</p> <p>2 It's board consent mail. It came from -- with</p> <p>3 Ms. Mehringer. I believe it is DX AC, or one of the two</p> <p>4 they are objecting to. So they withdraw their copy,</p> <p>5 withdraw their objection. But you don't have this in your</p> <p>6 exhibits, so I brought a copy for you.</p> <p>7 MR. VASILESCU: We would like to see whatever he</p> <p>8 plans to hand up to the Court.</p> <p>9 MR. KNIGHT: It's the same.</p> <p>10 MR. DUNNIGAN: Your Honor, would you like me to</p> <p>11 clarify?</p> <p>12 THE COURT: Yes, sir.</p> <p>13 MR. DUNNIGAN: What Mr. Knight is referring to</p> <p>14 is Defendant's Exhibit AL, for which the SEC moved in</p> <p>15 limine in regard to in May of this year. And Mr. Knight</p> <p>16 produced the attachments. And the SEC, in its reply</p> <p>17 papers, withdrew its objections, Defendant's Exhibit AL,</p> <p>18 based on Rule 106.</p> <p>19 MR. KNIGHT: I am producing it because you don't</p> <p>20 have it in your exhibits.</p> <p>21 THE COURT: Fine. Why don't you give me that.</p> <p>22 MR. KNIGHT: And when you are ready, I can</p> <p>23 respond to what the SEC discussed earlier.</p> <p>24 THE COURT: So we're finished with the SEC's</p> <p>25 slide show, as I understand it.</p>

<p style="text-align: right;">167</p> <p>1 MR. KNIGHT: Yes, and I'll modify mine</p> <p>2 accordingly to take that type of language out and use the</p> <p>3 similar type they will use.</p> <p>4 MR. VASILESCU: Your Honor, I still have some</p> <p>5 objections to other things in his slides.</p> <p>6 THE COURT: Right. Let me hear from the SEC on</p> <p>7 this.</p> <p>8 With respect to the slides that the defense</p> <p>9 would like to show to the jury in reference to Court's</p> <p>10 Exhibit 1, what is your position on that, on those items?</p> <p>11 I'm sorry, forgive me.</p> <p>12 MR. VASILESCU: We've already done 1 and 2, if</p> <p>13 any issue went to whether he can use the word "lies." And</p> <p>14 it was agreed he's taking them out too, the SEC lies.</p> <p>15 Obviously, he will have to take out on page 3,</p> <p>16 the bottom. He was addressing our reference to him as the</p> <p>17 "boss." Since we're taking it out, he should be taking it</p> <p>18 out on the bottom of page 3.</p> <p>19 MR. KNIGHT: No problem.</p> <p>20 MR. VASILESCU: That is also SEC lie number one.</p> <p>21 Now, stock offerings, page 4, the first bullet</p> <p>22 point says: iShop represented by securities law firm of</p> <p>23 Smith McCullough.</p> <p>24 And I think one thing that was noted by</p> <p>25 Magistrate Lindsay, we have full motion practice, relying</p>	<p style="text-align: right;">169</p> <p>1 be removed.</p> <p>2 The second sentence says --</p> <p>3 THE COURT: I'm sorry, what is the page?</p> <p>4 MR. VASILESCU: I'm sorry. My counsel pointed</p> <p>5 out I need to back up a page.</p> <p>6 On page 4, second bullet point, Mr. Knight</p> <p>7 wrote: September 21, 1999, iShop filed its first private</p> <p>8 placement with the SEC on form D.</p> <p>9 My understanding, that is not filed with the</p> <p>10 SEC. That private placement document, that is.</p> <p>11 MR. KNIGHT: Your Honor, that is in the exhibit.</p> <p>12 I have a copy of it in those binders I can show you right</p> <p>13 now.</p> <p>14 THE COURT: This is what he believes the</p> <p>15 evidence will show. He may be right; he may be wrong.</p> <p>16 The jury will be advised it's not evidence what either</p> <p>17 says in their opening.</p> <p>18 MR. VASILESCU: We'll move on, your Honor.</p> <p>19 On page 5, in addition to saying "SEC lie number</p> <p>20 two," the second sentence indicates misconduct by the SEC</p> <p>21 and says "SEC worked hard to hide this fact" --</p> <p>22 THE COURT: That's out.</p> <p>23 MR. KNIGHT: But will --</p> <p>24 MR. VASILESCU: -- "but will be shown at the</p> <p>25 trial that they lied."</p>
<p style="text-align: right;">168</p> <p>1 on counsel's defenses he can pursue based on the waiver of</p> <p>2 the privilege so he can take a deposition.</p> <p>3 Ms. Mehringer was the attorney which his defense</p> <p>4 of reliance on counsel was limited to. Now she was</p> <p>5 associated with Smith McCullough. But if you find as he</p> <p>6 just said, Attorney Mehringer -- if he says Smith</p> <p>7 McCullough, it suggests there were many attorneys he had</p> <p>8 counsel from, which is not the case.</p> <p>9 MR. KNIGHT: We'll change it to: iShop</p> <p>10 represented by Ms. Mehringer of the securities law firm of</p> <p>11 Smith McCullough.</p> <p>12 MR. VASILESCU: I will just say "law firm."</p> <p>13 MR. KNIGHT: Your Honor, it was a securities law</p> <p>14 firm. I have all the documents I can show you.</p> <p>15 THE COURT: That can be amplified during the</p> <p>16 testimony. But I'll not get into the nature of their</p> <p>17 practice or whether it is 10 percent, 50 percent.</p> <p>18 MR. KNIGHT: 100 percent, your Honor. I can</p> <p>19 show you.</p> <p>20 THE COURT: In any event, it will be: iShop</p> <p>21 represented by Theresa Mehringer of Smith and McCullough.</p> <p>22 And you may be able to -- I'll withdraw that.</p> <p>23 We'll see.</p> <p>24 MR. VASILESCU: Your Honor, on page 5, the</p> <p>25 bottom bullet point. Again, "SEC lie number two" should</p>	<p style="text-align: right;">170</p> <p>1 We'll say that the whole sentence must come out.</p> <p>2 THE COURT: On the international offices -- and</p> <p>3 again, I haven't read the whole thing. There is no</p> <p>4 problem with you indicating that you did have</p> <p>5 international offices because that's what you believe the</p> <p>6 proof will show.</p> <p>7 But the bullet point will be the SEC and all --</p> <p>8 the "SEC lie number two," all of that should come out.</p> <p>9 MR. KNIGHT: Anything about lie will come out.</p> <p>10 They don't have to address that. I'll address this</p> <p>11 without the word "lie" and readdress that with respect to</p> <p>12 hiding the facts.</p> <p>13 MR. VASILESCU: Your Honor, page 3, three</p> <p>14 bullets points, "SEC lied." But it's not enough that he</p> <p>15 just take out "lie." It's other editorializing which is</p> <p>16 misconduct by the SEC.</p> <p>17 "SEC lie number three," for example, that</p> <p>18 section, the last line says, "but the SEC had only shown</p> <p>19 part of the document."</p> <p>20 Now, he can say that, but he can't say "and</p> <p>21 worked so hard," so you don't see the rest of this which</p> <p>22 suggests some sort of misconduct.</p> <p>23 Similarly, you know, he obviously has to take</p> <p>24 out the word "lie" in the next two bullet points.</p> <p>25 MR. KNIGHT: Your Honor, they haven't shown the</p>

<p style="text-align: right;">171</p> <p>1 context of the document which is right underneath. It</p> <p>2 says this language. If you want me to remove it, I will,</p> <p>3 but I believe it happens to be accurate.</p> <p>4 THE COURT: Let's go through each of the bullet</p> <p>5 points. I'm on page 6. The first thing is where it says</p> <p>6 "SEC lie number three." That will be deleted.</p> <p>7 Then the sentence that follows it, it will be</p> <p>8 deleted up to the colon.</p> <p>9 What should be set forth there, you believe what</p> <p>10 the evidence will show concerning this subject. And you</p> <p>11 wanted to put in the discretion of the board and so forth.</p> <p>12 MR. KNIGHT: Which is right underneath that.</p> <p>13 THE COURT: The question is, how will you adjust</p> <p>14 that consistent with what we've stated?</p> <p>15 MR. KNIGHT: Anything with the word "lie" will</p> <p>16 be gone. Anything with basically "SEC lying" will be</p> <p>17 gone. And then the truth of the matter is, this is what</p> <p>18 it says underneath.</p> <p>19 If they want a different adjustment, I'm open to</p> <p>20 adjust it if they want something further.</p> <p>21 MR. VASILESCU: The last sentence in bullet</p> <p>22 point one where it says, "but the SEC" --</p> <p>23 THE COURT: That's out.</p> <p>24 MR. VASILESCU: Okay.</p> <p>25 THE COURT: But even the idea of "the truth,"</p>	<p style="text-align: right;">173</p> <p>1 THE COURT: Truth.</p> <p>2 MR. KNIGHT: That will be gone.</p> <p>3 MR. VASILESCU: And further down on that page,</p> <p>4 in bold it says "SEC lie number 10," and then after the</p> <p>5 phrase "SEC back to international offices" -- this goes</p> <p>6 back to that.</p> <p>7 MR. KNIGHT: Are you on 10 or 11?</p> <p>8 MR. VASILESCU: 10.</p> <p>9 There's a phrase in the sentence that we think</p> <p>10 is improper because it sounds like it is going back to</p> <p>11 arguments that were made to your Honor. And it says: SEC</p> <p>12 told Honorable Judge Hurley they didn't have a copy of</p> <p>13 iShop's business plan with the addresses of the</p> <p>14 international offices to throw out the evidence, yet here</p> <p>15 they have quoted out of the business plan that they don't</p> <p>16 have it.</p> <p>17 Essentially, Mr. Knight is seeking to introduce</p> <p>18 what was in the document that your Honor alluded to the</p> <p>19 other day by references that you excluded it and</p> <p>20 characterized it.</p> <p>21 MR. KNIGHT: They claimed they don't have this</p> <p>22 document, yet they bring it right out of the document.</p> <p>23 THE COURT: You know -- I'm sorry, what did you</p> <p>24 want to say?</p> <p>25 MR. DUNNIGAN: To clarify, I think Mr. Knight</p>
<p style="text-align: right;">172</p> <p>1 that's for the jury to decide what the truth is.</p> <p>2 MR. KNIGHT: I'll take all of those things out,</p> <p>3 your Honor.</p> <p>4 THE COURT: Put down "the proof will show" or "I</p> <p>5 anticipate the proof will show," whatever it is, about the</p> <p>6 use of the proceeds.</p> <p>7 So you will do that on number six, okay.</p> <p>8 So we're on to seven.</p> <p>9 MR. VASILESCU: Page 7 has similar issues in the</p> <p>10 sense that all three bullet points start out with "SEC</p> <p>11 lied." There's also in bold the word "truth."</p> <p>12 And then "SEC lie number seven" at the end of</p> <p>13 that paragraph. It says, "This is what the SEC don't want</p> <p>14 you to see."</p> <p>15 MR. KNIGHT: I'll take that out. And any</p> <p>16 similar language will be taken out so you don't have to</p> <p>17 repeat it. That's fine.</p> <p>18 THE COURT: Are we on page 8?</p> <p>19 MR. KNIGHT: Shall we move --</p> <p>20 MR. VASILESCU: We'll move on to SEC 8.</p> <p>21 The first sentence under the contract, again,</p> <p>22 engages in accusations of misconduct by saying SEC has</p> <p>23 really tried to confuse you and lie to you here.</p> <p>24 MR. KNIGHT: That will be gone.</p> <p>25 MR. VASILESCU: And again the word "truth."</p>	<p style="text-align: right;">174</p> <p>1 might have gotten confused.</p> <p>2 In our slides, the quotes out of the documents</p> <p>3 we pulled is the confidential executive summary. He's</p> <p>4 talking about a business summary which we got for the</p> <p>5 first time.</p> <p>6 MR. KNIGHT: That is not a business record, a</p> <p>7 summary.</p> <p>8 MR. DUNNIGAN: Your Honor, what we've previously</p> <p>9 marked as an exhibit entitled "Confidential Executive</p> <p>10 Summary."</p> <p>11 THE COURT: You know, we have to make a record.</p> <p>12 MR. KNIGHT: Sorry, your Honor.</p> <p>13 MR. DUNNIGAN: I can look through our exhibits</p> <p>14 and find the number, but we might be talking about a</p> <p>15 separate document. That is, Mr. Knight is talking about a</p> <p>16 separate document.</p> <p>17 THE COURT: We have to resolve this. It's SEC</p> <p>18 lie number ten.</p> <p>19 Firstly, I don't want anything about the Court</p> <p>20 representing some preliminary matter. The Court has</p> <p>21 nothing to do with it. But if Mr. Knight feels -- and I</p> <p>22 don't know if he's correct or not because of discovery</p> <p>23 problems and other things -- that somehow the jury will</p> <p>24 see the entire business plan, you can say something to</p> <p>25 that effect. But you have to be careful because I don't</p>

<p style="text-align: right;">175</p> <p>1 know if you will get the entire business plan in.</p> <p>2 MR. KNIGHT: They only want the complete</p> <p>3 document and for the only reason I submitted it. They</p> <p>4 admitted that the investors were never given that business</p> <p>5 plan.</p> <p>6 MR. VASILESCU: Your Honor, SEC told Honorable</p> <p>7 Judge Hurley they didn't have a copy of iShop's business</p> <p>8 plan. He's starting to characterize motion practice</p> <p>9 before the trial, and that's not proper because, one, it's</p> <p>10 not accurate, and it doesn't give the context.</p> <p>11 And then what will we do? Like characterizing</p> <p>12 argument he made before your Honor.</p> <p>13 THE COURT: I'm not sure Mr. Knight is in</p> <p>14 disagreement. I think the whole thing should come out,</p> <p>15 and Mr. Knight can live with it.</p> <p>16 MR. KNIGHT: Your Honor, if that's what you</p> <p>17 recommend, that's fine with me. That's all right.</p> <p>18 MR. VASILESCU: Now, the next bullet point, SEC</p> <p>19 lie number 11. We have a problem with that part of it</p> <p>20 again where it says "SEC lie" and the word "truth." And</p> <p>21 the rest he can properly argue his side of the case.</p> <p>22 THE COURT: I agree with that. I would take out</p> <p>23 on that the last bullet point "SEC lied" in number 11.</p> <p>24 The Festo contract owed \$5,000. "The SEC lied." I would</p> <p>25 take that out.</p>	<p style="text-align: right;">177</p> <p>1 should be taken out, SEC lie number 12. The rest of that</p> <p>2 is okay.</p> <p>3 The second bullet point, you know, it's not</p> <p>4 appropriate to suggest that there's wording by the SEC in</p> <p>5 that context.</p> <p>6 THE COURT: To go back, I think on the last</p> <p>7 paragraph, which would be the third bullet point, I think</p> <p>8 that is out. Just take out the word "truth."</p> <p>9 But an interesting wording by the SEC --</p> <p>10 MR. VASILESCU: I guess I'm afraid your Honor is</p> <p>11 suggesting that somehow we're coming up with language, you</p> <p>12 know, for filing.</p> <p>13 THE COURT: You can indicate on that bullet</p> <p>14 point, you can say basically -- I don't know if this is</p> <p>15 accurate though. iShop -- neither iShop or a</p> <p>16 representative of iShop indicated to a potential investor</p> <p>17 or to an investor that a major investment bank would take</p> <p>18 the company public.</p> <p>19 Does that have to do with Merrill Lynch or</p> <p>20 another bank?</p> <p>21 MR. KNIGHT: I don't know where this comes from.</p> <p>22 I'm sure in the trial everything will unfold. But right</p> <p>23 now, to make a statement, that is my response to them.</p> <p>24 THE COURT: Okay. As I understand it, the SEC,</p> <p>25 and correct me if I'm wrong, the SEC doesn't have a</p>
<p style="text-align: right;">176</p> <p>1 The rest of it, though -- some of this is in</p> <p>2 response to something that they said. We want to make</p> <p>3 sure this is not telling the jury -- but when you go</p> <p>4 through a slide show, you will go second.</p> <p>5 So let's assume they say something about Festo.</p> <p>6 You can have like a lead-in to your slide, this particular</p> <p>7 slide. Do you know what I'm saying? The SEC can do the</p> <p>8 same.</p> <p>9 This is really meant to supplement and to assist</p> <p>10 the jury following the thrust of the opening. It's not a</p> <p>11 substitute for the opening.</p> <p>12 MR. KNIGHT: Yes, your Honor.</p> <p>13 THE COURT: But that first line really should</p> <p>14 come out right through the word "truth" on the last of the</p> <p>15 bullet points at the bottom of page 8.</p> <p>16 MR. KNIGHT: As I mentioned to Mr. Vasilescu,</p> <p>17 all of the words "lie" and "truth" from the entire</p> <p>18 document will come out so he doesn't have to keep wasting</p> <p>19 the Court's time.</p> <p>20 THE COURT: Okay.</p> <p>21 MR. VASILESCU: Your Honor, may we turn to</p> <p>22 page 9?</p> <p>23 THE COURT: Yes, sir.</p> <p>24 MR. VASILESCU: Page 9, under the heading Major</p> <p>25 Investment Banks, first bullet point, and confirm, that</p>	<p style="text-align: right;">178</p> <p>1 problem on page 9. The "lie" reference is to be taken</p> <p>2 out, and the "truth" word is deleted. Is that correct?</p> <p>3 MR. VASILESCU: Yes.</p> <p>4 THE COURT: So that's what we'll do on that.</p> <p>5 MR. VASILESCU: Moving on, your Honor, to</p> <p>6 page 10. First bullet point. "SEC lied." That phrase</p> <p>7 has to be taken out.</p> <p>8 Same with the word "truth" in the next bullet</p> <p>9 point.</p> <p>10 THE COURT: Right.</p> <p>11 MR. VASILESCU: And also, we are seriously</p> <p>12 concerned with the statement in the second bullet point, a</p> <p>13 sentence that is in the middle, and I'll read it. It</p> <p>14 says: Up to a few months ago, iShop had 6.5 million</p> <p>15 products active with one of its initial suppliers alone,</p> <p>16 Baker and Taylor.</p> <p>17 This is highly problematic. One, there is no</p> <p>18 evidence that iShop is in any way active and has any</p> <p>19 business. And discovery closed a long time ago. And</p> <p>20 there's also, the Court should note, an attorney --</p> <p>21 Mr. Zellen had difficulty getting out of the case when he</p> <p>22 represented iShop because he had no one at iShop to</p> <p>23 communicate with.</p> <p>24 And Mr. Knight is in a lawsuit where he hasn't</p> <p>25 paid his attorneys, has failed to follow even the</p>

<p style="text-align: center;">179</p> <p>1 directions by the Court to pay for transcripts, and he's</p> <p>2 pro se. And to suggest to the jury that he's going to</p> <p>3 have this testimony, allowed to testify that somehow iShop</p> <p>4 is a functioning entity with 6.5 million products six</p> <p>5 months ago, when this company has long been defunct -- in</p> <p>6 fact, the SEC waived disgorgement in a penalty.</p> <p>7 Essentially it's a defunct penalty when settling with</p> <p>8 iShop.</p> <p>9 THE COURT: Mr. Knight?</p> <p>10 MR. KNIGHT: I communicated to Baker and Taylor.</p> <p>11 We signed papers. They told me the six and a half million</p> <p>12 products. They were active on the website for a few</p> <p>13 years. Somehow, a few months ago -- I didn't check it --</p> <p>14 it's gone off line. But I can probably have it brought</p> <p>15 back on and find out what the problem is.</p> <p>16 Basically what Baker and Taylor does, they have</p> <p>17 these products and put it on the iShop website without me</p> <p>18 doing anything. I give them a check for \$500, and the</p> <p>19 program is called Retailer Place. You can also get these</p> <p>20 products by paying \$500.</p> <p>21 THE COURT: You know what the problem is, we</p> <p>22 have to make sure what is presented to the jury is</p> <p>23 relevant to the issues as framed by the pleadings. So I'm</p> <p>24 not really sure how something happens six months ago or a</p> <p>25 year ago that bears on the particular actions set forth in</p>	<p style="text-align: center;">181</p> <p>1 MR. KNIGHT: I'm sorry.</p> <p>2 If you noticed in the letters of intent previous</p> <p>3 to September 21st, there was one from Baker and Taylor,</p> <p>4 which is a major supplier.</p> <p>5 THE COURT: We're just talking about this item.</p> <p>6 In other words, there is no problem with you saying, you</p> <p>7 know, iShop had letters of intent from suppliers during</p> <p>8 the relevant time frame and, if you believe the evidence</p> <p>9 will show that, again, during the relevant time frame</p> <p>10 there were a number of items being sold, available on the</p> <p>11 website. You can say that. But that's your</p> <p>12 representation.</p> <p>13 If you make a representation to the jury and you</p> <p>14 can't prove it either because I don't let the evidence go</p> <p>15 in or otherwise, usually what happens, the other side</p> <p>16 points that out and it taints your credibility before the</p> <p>17 jury. They do that in summation.</p> <p>18 But we're looking at this language where the --</p> <p>19 "up to a few months ago." That is clearly irrelevant</p> <p>20 (perusing).</p> <p>21 Now, if you had -- again, it's very hard to do</p> <p>22 this -- I'll just leave it at that.</p> <p>23 But "up to a few months ago," that has to come</p> <p>24 out.</p> <p>25 MR. KNIGHT: If they went on the iShop website</p>
<p style="text-align: center;">180</p> <p>1 the complaint.</p> <p>2 MR. VASILESCU: It's fair afield. The conduct</p> <p>3 happened in '99 and '2000, and the evidence from then,</p> <p>4 they had hardly any sales at all, and the company</p> <p>5 essentially has been defunct and not operating.</p> <p>6 Even now, I mean, Mr. Knight, he's not given any</p> <p>7 financials. And to even suggest that people can buy</p> <p>8 products now --</p> <p>9 THE COURT: Unless I'm missing the point, I</p> <p>10 don't see the relevance of it. In other words, the main</p> <p>11 question is when these offerings were made, among other</p> <p>12 things. Was interstate commerce involved and so forth.</p> <p>13 But with respect to the first cause of action, were</p> <p>14 misrepresentations made?</p> <p>15 So if hypothetically during the relevant time</p> <p>16 frame, that being sometime from '99 through 2000 -- and</p> <p>17 this is that basically iShop had ten products. And I know</p> <p>18 they had millions, according to the defense. But two</p> <p>19 years later if they had a huge business, that in and of</p> <p>20 itself wouldn't be relevant.</p> <p>21 MR. VASILESCU: We agree, your Honor.</p> <p>22 THE COURT: That's the problem. This</p> <p>23 unnecessarily confuses the issue.</p> <p>24 MR. KNIGHT: May I address that too?</p> <p>25 THE COURT: I'm sorry, go ahead.</p>	<p style="text-align: center;">182</p> <p>1 and I was able to reactivate it again, and they see the</p> <p>2 six and a half million items they can purchase, would that</p> <p>3 be let in or do you want me to take it out?</p> <p>4 THE COURT: We'd have a mistrial, and I'd be</p> <p>5 underwhelmed if that happens. They have to make their</p> <p>6 decision based on the evidence adduced in the courtroom.</p> <p>7 One of the things I will tell them, do not look</p> <p>8 at the internet. Do not read anything about the case.</p> <p>9 MR. KNIGHT: I'll take that out, the second</p> <p>10 part.</p> <p>11 THE COURT: That would be improper.</p> <p>12 MR. KNIGHT: Six and a half million reference,</p> <p>13 if that's what you want me to take out, and not the first</p> <p>14 part, correct?</p> <p>15 THE COURT: Yes. If you believe the evidence</p> <p>16 will show during the relevant time frame the first</p> <p>17 statement is accurate, if you believe that, that's fine.</p> <p>18 MR. VASILESCU: Your Honor, the last sentence --</p> <p>19 and this is problematic on page 10 also.</p> <p>20 THE COURT: That's out.</p> <p>21 MR. KNIGHT: The whole thing is out.</p> <p>22 MR. VASILESCU: So it's our understanding that</p> <p>23 from "up to a few months ago" through the rest of that</p> <p>24 paragraph, that will be deleted.</p> <p>25 THE COURT: Yes.</p>

<p style="text-align: right;">183</p> <p>1 MR. KNIGHT: Correct.</p> <p>2 MR. VASILESCU: Your Honor, skipping forward to</p> <p>3 the last slide, number 12 -- well, first of all, one of</p> <p>4 our in limine objections which I think your Honor</p> <p>5 addressed the other day dealt with Mr. Knight making</p> <p>6 arguments that the case is old and somehow suggesting that</p> <p>7 it's the SEC's fault that it is old. And his first bullet</p> <p>8 point tends to go in that direction.</p> <p>9 MR. KNIGHT: Your Honor, if we can backtrack to</p> <p>10 what they show, which is the stock of iShop and my</p> <p>11 signature made very large, and they show worthless stock,</p> <p>12 and that is in response to that.</p> <p>13 MR. VASILESCU: It appears he's trying to argue</p> <p>14 there is something amiss here because the matter was</p> <p>15 investigated in 2000 and the action was filed in 2004.</p> <p>16 If he's allowed to go that route, then we'd have</p> <p>17 to bring in the fact he'd been sanctioned in discovery</p> <p>18 multiple times, and there would be a whole sideshow</p> <p>19 regarding whose fault it is that it is taking ten years to</p> <p>20 go to trial in this case.</p> <p>21 MR. KNIGHT: They remove their part; I'll remove</p> <p>22 mine. There is a whole bunch of stuff here. And put my</p> <p>23 signature here, and they highlighted it into a huge thing</p> <p>24 here, and this is all worthless, and this is all</p> <p>25 worthless, suggesting all kinds of stuff to the jury.</p>	<p style="text-align: right;">185</p> <p>1 misrepresentations, I think that is fair game.</p> <p>2 MR. KNIGHT: You can prove that at trial.</p> <p>3 THE COURT: I do agree with that. If they do</p> <p>4 believe that's what the evidence will show.</p> <p>5 We've already been through the SEC's slide show,</p> <p>6 and that's been resolved. And nothing that has surfaced</p> <p>7 since then suggests that that subject should be revisited.</p> <p>8 Accordingly, it will not be revisited.</p> <p>9 MR. VASILESCU: Your Honor, I propose that the</p> <p>10 parties agree to try to revise these in sum, your rulings</p> <p>11 today, and exchange them later today so that if there is</p> <p>12 still an issue, in compliance with your rulings today, we</p> <p>13 can raise them the first thing with your Honor Monday</p> <p>14 morning.</p> <p>15 THE COURT: I think both sides are probably</p> <p>16 tired, but I think that is actually a good idea.</p> <p>17 MR. VASILESCU: Thank you, your Honor.</p> <p>18 THE COURT: So I would ask Mr. Knight and</p> <p>19 counsel to get together -- we've gone through it; I think</p> <p>20 everybody understands the rules -- and make the</p> <p>21 appropriate adjustments. I certainly hope you'll agree,</p> <p>22 but I'll be available. I'll be around for another hour or</p> <p>23 so anyway.</p> <p>24 MR. KNIGHT: I'll make every effort to make that</p> <p>25 happen.</p>
<p style="text-align: right;">184</p> <p>1 THE COURT: With respect to page 12, the first</p> <p>2 bullet point is irrelevant. There's no reason to put that</p> <p>3 in because it doesn't elucidate any point that is germane</p> <p>4 to the jury's function.</p> <p>5 The second bullet point falls under the same</p> <p>6 category. The problems that iShop may have had with the</p> <p>7 selling of stock or reducing the value of the stock which</p> <p>8 has already been sold, that is not an issue in this trial.</p> <p>9 In other words, the SEC is charging violations</p> <p>10 of the securities act or the exchange act and various code</p> <p>11 regulations. That's what the issue is. What happens to</p> <p>12 the stock value and why has nothing to do with the suit.</p> <p>13 So the first three points have to come out.</p> <p>14 Now, I don't know -- well, the last bullet point</p> <p>15 as framed is objectionable as well. So under 403, that</p> <p>16 will have to be deleted.</p> <p>17 So page 12 will not be part of the slide show.</p> <p>18 MR. KNIGHT: Would you also ask them to take out</p> <p>19 their reference to stock and signature and all that? That</p> <p>20 is suggesting to the jury that guy sold all this worthless</p> <p>21 stock.</p> <p>22 MR. VASILESCU: Your Honor, this case is about</p> <p>23 his control and involvement in the sale of stock and the</p> <p>24 fact that he signed them. And in showing the jurors that</p> <p>25 investors bought these stock certificates based on these</p>	<p style="text-align: right;">186</p> <p>1 THE COURT: So let us know. And if you can't --</p> <p>2 I don't want to do anything on Monday morning that will</p> <p>3 delay the jury. But if we have to, we will. I mean, the</p> <p>4 slide show is important. That's kind of the first order</p> <p>5 of business. So see if you can get it resolved, and if we</p> <p>6 have to, we'll go over to Monday morning.</p> <p>7 MR. DUNNIGAN: Your Honor, earlier today you</p> <p>8 mentioned that we could get into evidence before opening</p> <p>9 statements, I believe, paragraphs in the complaint that</p> <p>10 were admitted by the defendant.</p> <p>11 Would the Court be reading those paragraphs in</p> <p>12 the complaint --</p> <p>13 THE COURT: What I want you to do is you prepare</p> <p>14 the items that you would like me to take judicial notice</p> <p>15 of --</p> <p>16 MR. DUNNIGAN: Yes, your Honor.</p> <p>17 THE COURT: -- as far as the answers are</p> <p>18 concerned. And there is different ways we can do that.</p> <p>19 Normally, to the extent an issue isn't contested and it's</p> <p>20 an important issue, I typically will tell the jury that</p> <p>21 during my preliminary instruction so it gives them some</p> <p>22 idea of what the nature of the dispute is.</p> <p>23 So to the extent it is agreed these were</p> <p>24 unregistered securities, which it is because that is</p> <p>25 admitted in the answer, they should know that up front.</p>

<p style="text-align: right;">187</p> <p>1 Go through and give me the paragraphs you want</p> <p>2 me to include, and I'll discuss it with Mr. Knight as</p> <p>3 well. But that's the way procedurally I would handle</p> <p>4 that.</p> <p>5 MR. KNIGHT: Your Honor, one more issue.</p> <p>6 THE COURT: Yes.</p> <p>7 MR. KNIGHT: On the issue of the pinpoint</p> <p>8 citations in parts of the deposition that is supposed to</p> <p>9 be read, the plaintiff took the deposition of Noakes, and</p> <p>10 put the entire thing into evidence, which is fine with me.</p> <p>11 So what I've done, I reviewed a few more that</p> <p>12 are only 36 pages. I would like to do the same. There's</p> <p>13 a couple I didn't get to because I had to print out what</p> <p>14 they did, and by printing all of these documents, my</p> <p>15 printer ran out of ink. I don't know if I can finish</p> <p>16 them. I'll try.</p> <p>17 MR. DUNNIGAN: Your Honor, he can have until</p> <p>18 5 p.m. on Monday to give us that.</p> <p>19 MR. KNIGHT: That's no problem.</p> <p>20 THE COURT: So you'll be able to abide by that,</p> <p>21 5 o'clock?</p> <p>22 MR. KNIGHT: Yes.</p> <p>23 Vavaro, and also Philip Barnard, is only 36</p> <p>24 pages as well, so we'll put the whole thing in such as</p> <p>25 Noakes.</p>	<p style="text-align: right;">189</p> <p>1 proof, and we'll leave it at that. And so they would call</p> <p>2 their first witness, or they would put in the first</p> <p>3 document or evidence in some other fashion, which could be</p> <p>4 judicial notice. They can say, the plaintiff, as the</p> <p>5 first order of business and as part of your proof, would</p> <p>6 ask your Honor to take judicial notice of A, B and C. If</p> <p>7 I agree, I would do it.</p> <p>8 MR. KNIGHT: My question would be, when they --</p> <p>9 THE COURT: You don't have to call -- maybe this</p> <p>10 will help. You don't have to call or do anything until</p> <p>11 they've presented their case.</p> <p>12 MR. KNIGHT: But in case they put an exhibit --</p> <p>13 let's say Philip Barnard testifying by deposition, and at</p> <p>14 the same time they are addressing that, going over</p> <p>15 exhibits with him. So they would have to show that</p> <p>16 exhibit, I assume, and I can address the exhibit and the</p> <p>17 testimony at the same time?</p> <p>18 THE COURT: Yes.</p> <p>19 MR. KNIGHT: Okay, your Honor.</p> <p>20 MR. DUNNIGAN: I'm sorry, I think there might be</p> <p>21 miscommunication.</p> <p>22 I think Mr. Knight is under the impression he'll</p> <p>23 be allowed to argue to the jury.</p> <p>24 THE COURT: What was that?</p> <p>25 MR. DUNNIGAN: He'll be allowed to argue to the</p>
<p style="text-align: right;">188</p> <p>1 And Baker and Taylor, I'll give them pinpoints.</p> <p>2 Ingram Micro, I'll put them in.</p> <p>3 THE COURT: You are required to give pinpoint</p> <p>4 citations if the deposition is 30 pages on, 35 or 100.</p> <p>5 MR. KNIGHT: And they need to do the same, your</p> <p>6 Honor.</p> <p>7 THE COURT: You can do that. But if it needs</p> <p>8 relevancy you can say, I need to read the entire document.</p> <p>9 MR. KNIGHT: On the shorter ones, I can do the</p> <p>10 same; the longer ones, no problem.</p> <p>11 THE COURT: You have to put before the jury what</p> <p>12 is relevant.</p> <p>13 MR. KNIGHT: One more question, your Honor.</p> <p>14 The opening day, like the first day of trial --</p> <p>15 THE COURT: Yes.</p> <p>16 MR. KNIGHT: -- they start the slide show and</p> <p>17 they do their openings.</p> <p>18 THE COURT: The slide show is part of the</p> <p>19 openings, yes. It's a long process.</p> <p>20 MR. KNIGHT: So I guess I will go next and do my</p> <p>21 opening?</p> <p>22 THE COURT: Yes.</p> <p>23 MR. KNIGHT: What happens after that, your</p> <p>24 Honor?</p> <p>25 THE COURT: Then the SEC has the burden of</p>	<p style="text-align: right;">190</p> <p>1 jury about sworn deposition testimony instead of merely</p> <p>2 choosing -- pointing to the highlights.</p> <p>3 THE COURT: Is that your understanding?</p> <p>4 MR. KNIGHT: I want to highlight the testimony.</p> <p>5 THE COURT: Basically during your opening, you</p> <p>6 directly address the jury. During summation, you directly</p> <p>7 address the jury.</p> <p>8 When you testify, you do provide information to</p> <p>9 the jury subject to the rules of evidence. But that's it.</p> <p>10 I mean, you are not permitted to comment on evidence in</p> <p>11 any other fashion during the course of the trial. You are</p> <p>12 not permitted --</p> <p>13 MR. KNIGHT: That's what I don't understand. I</p> <p>14 wanted to get clarification.</p> <p>15 THE COURT: That's the rule. It's like on</p> <p>16 television. They cut a couple parts off. But when you</p> <p>17 watch "Law and Order," the witness takes the stand, the</p> <p>18 witness gives direct and cross-examination and possibly</p> <p>19 redirect. That isn't followed by one of the attorneys</p> <p>20 saying: I want to make a point, Judge.</p> <p>21 MR. KNIGHT: My question is: On the deposition</p> <p>22 testimony, what happens?</p> <p>23 THE COURT: On the deposition testimony, the</p> <p>24 proponent of the evidence, they will read that into the</p> <p>25 record, and typically they would call somebody to take the</p>

<p style="text-align: center;">191</p> <p>1 stand. The attorney asks questions from the transcript. 2 Basically they read the questions from the transcript. 3 The person sitting on the stand reads the answers from the 4 transcript. 5 Once that is done, if the other attorney feels 6 there is other information that should be placed to the 7 jury from that transcript, they would follow the same 8 procedure. 9 MR. KNIGHT: But there's nobody on the stand 10 because they are not present. They are going by 11 deposition. 12 Here's my question. You have Mr. Barnard 13 testifying by deposition, and Mr. Barnard was shown 14 exhibits by the SEC. So my understanding, the SEC will 15 call his parts of the deposition, and they have to be in 16 conjunction with that exhibit. 17 When do I get to address it? 18 THE COURT: When do you get to what? 19 MR. KNIGHT: How do I do this? Do I 20 cross-examine the deposition? The exhibit? 21 THE COURT: I don't know how you cross-examine a 22 deposition. You can call some witness who gives firsthand 23 information that is contrary to that. I mean, there are 24 different ways that can be done. 25 MR. KNIGHT: So when it is my turn, I can bring</p>	<p style="text-align: center;">193</p> <p>1 Giving me the excerpts of the testimony, the 2 parts they want to read, I cannot counterquote the parts I 3 want to read, but I have the whole testimony. If they 4 only give me the parts they want to read and I can't 5 counter the testimony, they have to give me the whole 6 testimony. 7 THE COURT: I assume if there is a problem 8 here -- I assume Mr. Knight was required to pay for 9 certain depositions. That's not the problem? 10 MR. DUNNIGAN: No, your Honor. At any 11 deposition we designated excerpts from, as a courtesy we 12 provided the entire deposition to Mr. Knight. 13 MR. KNIGHT: The videotapes, your Honor, are 14 events. It's not depositions. 15 MR. DUNNIGAN: He has the transcripts, and if he 16 has a sentence he needs, we can work that out. 17 THE COURT: So the deposition was videotaped? 18 MR. DUNNIGAN: Yes, your Honor. 19 MR. KNIGHT: No, your Honor, iShop shareholder 20 events, I want the complete transcript, not only the parts 21 they want to read. 22 MR. DUNNIGAN: I think I understand now. PX 144 23 and 148 are videotapes are iShop shareholder events. The 24 SEC -- they are very long. I mean, we can spend a good 25 part of this trial watching television, but that wouldn't</p>
<p style="text-align: center;">192</p> <p>1 up the same deposition and the same exhibits, that is, 2 Ms. Vavaro. 3 THE COURT: As a general matter, that's true. 4 MR. VASILESCU: Mr. Knight was exploring -- 5 there were several testimonies, two by video deposition. 6 Mr. Knight had an opportunity, or his counsel, to attend 7 those depositions. They did not. Mr. Noakes and 8 Mr. Barnard will be video depositions. 9 I think he was suggesting that -- and I think 10 your Honor clarified it for him. He was suggesting after 11 we play the video deposition, he would do a speaking 12 testimony to the jury. 13 THE COURT: I think he knows he can't do that. 14 MR. KNIGHT: That is irrelevant, and I know I 15 can't do that. 16 THE COURT: You know, did you get that packet I 17 told you to get from the pro se's office? 18 MR. KNIGHT: I will get it, your Honor, but 19 that's not what I was saying at all. 20 THE COURT: There are very concrete rules. And 21 with respect to deposition testimony, if you have 22 firsthand information which is contrary to that, you know, 23 you don't do it then but when you get to your case. 24 MR. KNIGHT: One more thing I need from the 25 plaintiff, your Honor.</p>	<p style="text-align: center;">194</p> <p>1 be productive. 2 We have transcripts made of what we intend to 3 put in evidence. We did not make transcripts of the 4 entire presentation. 5 If Mr. Knight wants to pick portions of the 6 videotape he believes are relevant, we can play them. 7 MR. KNIGHT: Would that be okay, your Honor? 8 Maybe a few minutes, maybe five minutes altogether from 9 the whole video? 10 THE COURT: Okay. 11 In other words, he has access to the whole 12 thing, the whole video. The video is quite lengthy. The 13 SEC feels certain portions are irrelevant. That's the 14 portions they want to present before the jury. 15 Then the thought is -- what is the thought? He 16 has seen or can see a full video, and he can say, well, I 17 want the portion that occurred at 12:02 to 12:05? 18 MR. DUNNIGAN: Before the trial, if he wants to 19 provide us with that, we can either make our objections or 20 play it. 21 THE COURT: I mean some of these, unfortunately, 22 will have to be resolved during the course of the trial, 23 but I would ask both sides they do the best they can to 24 cooperate with each other, which I would like to believe 25 has occurred thus far, because we do want to get this case</p>

<p style="text-align: center;">195</p> <p>1 before the jury so they can make an intelligent decision</p> <p>2 within a reasonable period of time.</p> <p>3 So what else do we have to do today?</p> <p>4 MR. KNIGHT: Your Honor, there is a report from</p> <p>5 Mr. Patisso. I e-mailed a copy to Mr. Vasilescu. I can't</p> <p>6 say the name right, I want to make sure you received it.</p> <p>7 MR. VASILESCU: Mr. Vasilescu.</p> <p>8 MR. KNIGHT: I'm so sorry.</p> <p>9 MR. VASILESCU: We did receive it.</p> <p>10 To clarify something. The document at some</p> <p>11 point when I described it -- Mr. Knight says that this</p> <p>12 document was dated in February of 2000, and it is actually</p> <p>13 something that was consistent with what I described was</p> <p>14 Mr. Patisso -- after he left.</p> <p>15 And there's a series of documents made --</p> <p>16 essentially a submission in the Scientology community, and</p> <p>17 he sent it to a business Scientology center.</p> <p>18 MR. KNIGHT: Sent to Mike Gumpert. He's</p> <p>19 misstating.</p> <p>20 THE COURT: Don't do that.</p> <p>21 MR. VASILESCU: Your Honor, we have the</p> <p>22 document, sent there and cc'd to other people who are at</p> <p>23 iShop, and it has to do with complaints that Mr. Patisso</p> <p>24 had with Mr. Knight. We don't --</p> <p>25 Our objections to the document are, you know,</p>	<p style="text-align: center;">197</p> <p>1 down to the clerk's office on the first floor and tell</p> <p>2 them you want the pro se packet, because otherwise they'll</p> <p>3 close at five. They'll be gone.</p> <p>4 MR. KNIGHT: Okay, your Honor.</p> <p>5 THE COURT: That's the first order of business.</p> <p>6 Very good, gentlemen. Thank you, and I'll see</p> <p>7 you all on Monday.</p> <p>8 (Whereupon, the proceedings were adjourned until</p> <p>9 Monday, September 15, 2014, at 9:30 a.m.)</p>
<p style="text-align: center;">196</p> <p>1 these are documents that were in his control. We have a</p> <p>2 version that we did not designate as an exhibit which is</p> <p>3 consistent with this from Mr. Patisso and from a while</p> <p>4 back. And he's producing it at the eleventh hour.</p> <p>5 Frankly, if he wants it to come in, then I say</p> <p>6 let's designate it as an exhibit and we can use it also.</p> <p>7 MR. KNIGHT: That's fine with me, your Honor.</p> <p>8 MR. DUNNIGAN: We can call it either Plaintiff's</p> <p>9 Exhibit 360, which would be our next exhibit number, your</p> <p>10 Honor --</p> <p>11 THE COURT: All right.</p> <p>12 Are we done?</p> <p>13 MR. VASILESCU: Yes.</p> <p>14 I would say we don't have a paper copy because</p> <p>15 we have it digitally.</p> <p>16 MR. KNIGHT: I have it right here. I can give</p> <p>17 one to your Honor if you would like.</p> <p>18 THE COURT: You gentlemen will meet and try to</p> <p>19 address the adjustment of the language in the various</p> <p>20 slide show presentations?</p> <p>21 MR. VASILESCU: Absolutely, your Honor.</p> <p>22 Thank you, your Honor.</p> <p>23 THE COURT: Very good. Thank you, gentlemen.</p> <p>24 Now, Mr. Knight, what I would suggest, either</p> <p>25 before you go into a dialogue about the slide show, go</p>	

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